IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929

Crl.MC.No. 1146 of 2007()

CMP.1464/2007 of JUDL. MAGISTRATE OF FIRST CLASS-V, KOZHIKODE
CRIME NO.75/07 OF THE NALLALAM POLICE STATION.

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PETITIONER: ACCUSED.

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1. KUNHAMUTTY M., S/O. KUNHALI,
AGED 46 YEARS, FAMA, P.O.NALLALAM, KOZHIKODE.

2. SAJU, S/O. MUHAMMED,
AGED 31 YEARS, ULLAMASSERY PARAMBA, ANA ROAD,
AREEKAD.

3. ASHRAF, S/O. HASSAN,
AGED 34 YEARS, THODIYIL PARAMBA, P.O.KOLATHARA.

4. SAKEER BABU, S/O. KUNHAMAD,
AGED 29 YEARS, THAYYIL HOUSE, P.O.KOLATHARA.

5. SHAHEER, S/O. ALI, AGED 32 YEARS,
PARANGATTUMADAM, P.O.NALLALAM.

6. THOTTATHIL RIYAS, S/O. ALI,
AGED 28 YEARS, THOTTATHIL, PALLITHODI, NALLALAM.

7. KOYAMU T., S/O. BAVA,
AGED 29 YEARS, KURUNTHATTIL, P.O.NALLALAM.

8. SHIHABUL AKBAR, S/O. MAMUKOYA,
AGED 29 YEARS, KIZHAKKEDATH PARAMBA, P.O.NALLALAM.

9. ARAMKUNI ASHRAF, S/O. KOYASSAN,
KIZHUVANA PARAMBA, NALLALAM.

10. UMMAR FAROOK, S/O. KAMMU,
AGED 26 YEARS, KUNHATHIL HOUSE, KINASSERY.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT.

STATE OF KERALA,
THORUGH THE SUB INSPECTOR OF POLICE,
NALLALAM POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1146 OF 2007

Dated this the 11th day of April, 2007

ORDER

The petitioners are accused who face the allegations, inter alia, under Sec.307 read with Sec.149 of the IPC. The crux of the allegations against them is that the accused persons, who allegedly belong to a sand Mafia, seized an opportunity that was available to unleash an attack on the local Sub Inspector of Police and caused injuries by hitting with stones and pelting stones. It is alleged that the contumacious and culpable intention of the members of the unlawful assembly was to cause death of the Sub Inspector of Police. A crime was registered. Investigation is in progress. The petitioners along with others had approached this Court for an order of anticipatory bail and by order dated 22/3/07 in B.A.No.1655/07 the said application was dismissed; but subject to certain observations to safeguard the interests of

the petitioners. The petitioners were directed to surrender before the Investigating Officer and the Investigating Officer was directed to produce them before the learned Magistrate after interrogation. The learned Magistrate was directed to dispose of the application for bail on the date of such production itself preferably. Some of the accused persons, who had approached this Court for anticipatory bail along with the petitioners, surrendered before the Investigating Officer. They were produced before the learned Magistrate; but they were not granted bail by the learned Magistrate. In these circumstances, the petitioners have come to this Court with a prayer that the allegations under Sec.307 of the IPC may be quashed. That allegation is raised with mala fide and vexatious motive, it is contended. It is, in these circumstances, urged that the FIR registered in so far as it relates to the allegation under Sec.307 of the IPC may be quashed.

2. The crux of the contention of the learned counsel for the petitioners is that the allegation under Sec.307 of the IPC has been raised with vexatious intent with the oblique motive of

ensuring that the petitioners do not get bail and they do continue in custody for some period of time. I am certain that this allegation must have been considered by the learned Judge who considered the application for anticipatory bail. At the moment and with the available inputs I find absolutely no reason to invoke the powers under Sec.482 of the Cr.P.C. to quash the FIR in so far as it relates to the allegation under Sec.307 of the IPC. I may hasten to observe that I have not intended to express any opinion on merits about the sustainability of that allegation. I have chosen only to take the view that at the moment and with the available inputs there is no reason to invoke the powers under Sec.482 of the Cr.P.C. to quash the FIR in respect of the said allegation. Sufficient safeguards have already been provided by the learned Judge who passed the orders in the application for anticipatory bail. The petitioners must appear before the learned Magistrate and advance all their contentions before the learned Magistrate which would justify their release on bail by the learned Magistrate. There can be no doubt that the mere fact that the allegations under Sec.307 of the IPC are

raised by the police, will certainly not take away the jurisdiction or competence of the learned Magistrate in an appropriate case to dispose of the application for bail after considering the specific allegations against the petitioners on merits.

3. With the above observations, this Crl.M.C. is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge